

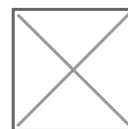
27 February 2015: Revision of the leniency procedural notice

Published on May 20, 2015

The Autorité de la concurrence has launched a public consultation on the revision of its procedural notice concerning the Leniency Programme.

Undertakings and competition law professionals are invited to submit their observations to it by 20 March of this year.

> Version française



The Autorité de la concurrence has been operating its Leniency Programme for several years. It has now decided to review it once again in order to take into account new developments in its decision-making practice and in the European model programme.

What is leniency?

Anticompetitive agreements are generally established in the greatest of secrecy. As a consequence, they are particularly difficult to detect. The leniency procedure introduced in France by the law of 15 May 2001 (new economic regulations or 'NRE') is an effective tool for identifying illegal agreements and helping the Autorité to sanction them. It allows a company to reveal a cartel in which it has participated to the Autorité de la concurrence, in return for a total or partial exemption from penalties. In order to receive this exemption, the company needs to make a positive contribution to the processing of the case, in particular by providing pieces of evidence on the existence of the agreement, and cooperating genuinely, fully, on a continuous basis and expeditiously

throughout the procedure.

The French Leniency Programme: 14 years of implementation

In order to ensure a clear framework for leniency applications to the benefit of companies, in 2006 the Autorité de la concurrence adopted a notice to their attention which sets out the practical means by which this procedure can be implemented. Several points of the French Leniency Programme were modernised in 2007 and 2009, with the aim of ensuring a consistent and equal treatment of the undertakings within Europe.

Furthermore, in 2011, the Autorité established the post of Leniency Officer –an expert dedicated to the implementation of the Leniency Programme.

To date, nine leniency decisions have been made by the Autorité in which some twenty companies have been fully or partially exempted from fines.

Decision number	Case
<u>14-D-20</u>	Wallpaper sector
<u>14-D-19</u>	Home and personal care products
<u>13-D-12</u>	Chemical commodities cartel
<u>12-D-09</u>	Flour sector cartels
<u>11-D-17</u>	Laundry detergents cartel
<u>08-D-32</u>	Steel cartel
<u>08-D-12</u>	Plywood production
<u>07-D-48</u>	Removal service
<u>06-D-09</u>	Door manufacturing

European cooperation: harmonising leniency policy

On 29 September 2006, the European competition authorities meeting as the European Competition Network (ECN) adopted a model programme defining common principles for handling leniency applications across all European Union

countries. This model programme was aimed at enhancing the attractiveness of leniency for companies. It offered them a level of homogeneity and legal certainty that had been missing until then as a result of differences that existed between the various national leniency programmes.

Today, 27 national competition authorities have leniency programmes which are broadly in line with the model programme. Building on this initial success, the ECN has worked to enhance the attractiveness of the model Leniency Programme, in order to maintain incentives for undertakings to use the programme. The model Leniency Programme was thus revised and a new version of the programme was adopted on 22 November 2012. In particular, this new version strengthens the system of summary applications, to the benefit of undertakings and competition authorities alike. These summary applications allow undertakings, which have filed or are in the process of filing, an application for immunity with the European Commission on the basis of the same facts, to secure their application for leniency, regardless of which competition authority will eventually take the case forward.

The system put into place has already borne fruit: the Autorité has received 52 summary applications since the first model programme came into effect in 2006.

New features of the revised draft procedural notice

The proposed revision of the procedural notice has been inspired by the Autorité's practice in leniency matters since the adoption of its last notice in March 2009, by the results of the study of 15 April 2014 on leniency as well as changes made to the European model programme by the ECN in November 2012.

The main amendments made to the procedural notice which are subject to public consultation relate to three areas:

- **Providing clarifications as to the practical implementation of the Leniency Programme with a view in particular to:**

- enhancing the visibility of the Leniency Officer who is already playing a central role in advising companies how to implement the procedure;

- setting out how and when undertakings should apply for a marker, in particular if dawn raids are underway;

- describing in more detail how a leniency application will be reviewed by the Autorité and, with particular reference to type 2¹ applicants, how assessment of the application's significant added value will be made.

- **Consolidating the Autorité's practice in integrating various principles developed since the last revision of the notice in 2009:** within the framework of the planned revision, the Autorité intends to include in the notice various principles arising from its recent decision-making practice. In particular these will clarify undertakings' obligations regarding cooperation with the Autorité.

The draft revised notice will also contain details of the legal entities that might benefit from a leniency application.

In addition, the procedural notice is expected to state that the Autorité will henceforth systematically publish, save in exceptional circumstances, a press release following dawn raids, as it did twice in 2014. Such a step is aimed at improving equality between undertakings that are in a position to submit a leniency application.

- **Tailoring the notice to the revised 2012 version of the EU Model Leniency Programme:** at the time of the ECN's revision of the Model Leniency Programme in November 2012, one of the major innovations, which is not currently included in the notice, related to the extension of the admissibility of summary applications to any applications, regardless of type. This innovation is such that it will, in particular, ease the administrative burden on type 2 applicants.

Above and beyond the aforementioned amendments, within the framework of this consultation, the Autorité wishes to gather the opinions of undertakings and competition law professionals with regard to knowing whether the incentives for

a company to submit a type 2 leniency application should be enhanced. It would in particular like to receive guidance in the form of useful comments on the balance currently proposed between the order of submission of the application and analysis of the significant added value provided by the undertaking in determining the level of reduction of the fine.

Comments should be submitted to the Autorité de la concurrence before 20 March 2015 via the following email address

¹ Applicant to the Autorité de la concurrence when the Autorité already has information on the alleged cartel in its possession.

> See the draft revised procedural notice relating to the French Leniency Programme

Press contact:

Rebecca Hébert / Tel.: 01 55 04 01 81 - Email